IOANNIS FANTIS & ANOR.

v.

THE OWNERS OF THE VESSEL "DANIMAR"

HIGH COURT, SINGAPORE
LAI KEW CHAI J
[ADMIRALTY IN REM NO. 515 OF 1982]
29 AUGUST 1988

LABOUR LAW: *Employment - Plaintiffs claim for unpaid wages - Whether arrears of wages still owing to plaintiffs - Whether on the evidence they were paid before leaving the ship.*

The first plaintiff as master of m.t Danimar claimed the sum of US$131,439 being the balance of unpaid wages and allowances. The second plaintiff claimed the sum of US$22,272 being unpaid wages for his work as second engineer from 2 February 1980 to 12 August 1980 and as chief engineer from 13 August 1980 to 5 February 1981. The vessel arrested by the interveners had been sold and after expenses, the balance in Court was $142,989.32 which might be available to meet the claims of both plaintiffs who if they succeeded in the claim will have to share the amount standing to the credit of the vessel *pari passu*.

The interveners disputed both claims and alleged that both the plaintiffs had been paid their wages and allowances in full and there was nothing due to them.

Held:

[1] On the evidence the plaintiffs had failed to prove that the wages and allowances which they claimed was due to them and that the Court was satisfied that the plaintiffs had received their full emoluments before they left the vessel.

[2] In respect of the first plaintiff it was clear from the hand writing expert's evidence, his salary was US$3,200 and not US$8,200 as alleged.

[Plaintiffs claim dismissed with costs.]

For the plaintiffs - Morris John
For the interveners - Gina Lee-Wan

JUDGMENT

Lai Kew Chai J:

The first plaintiff as master of m.t. "Danimar" of the Port of Panama claimed the sum of US$131,439 being the balance of unpaid wages and allowances over the period of 16 months and 4 days from 2 February 1980 to 8 June 1981. The second plaintiff claimed the sum of US$22,272 being unpaid wages for his work as second engineer of the vessel from 2 February 1980 to 12 August 1980 and as chief engineer from 13 August 1980 to 5 February 1981. I was told that the vessel, arrested by the interveners, had been sold and that after paying out sheriff's expenses and crew wages, the balance in Court was $142,989.32 together with some proceeds from the sale of bunkers which might be available to meet the claims of both plaintiffs who, if they succeed before this Court, will have to share the amount standing to the credit of the vessel *pari passu*.

The interveners disputed both claims. They claimed the first plaintiff was paid at the rate of only US$3,200 per month and not US$8,200 per month, as the first plaintiff asserted; that the first plaintiff had been paid US$69,300 which was all he was entitled to; and that the Crew

Roll, defence Exhibit D1, as regards the salary of the first plaintiff, was altered from US$3,200 to US$8,200 by the alteration of the figure "3" to "8" as opined by an expert, DW1 Chng Beng Han. Regarding the claims of the second plaintiff, the interveners asserted that he had also been paid in full and that according to the Crew Roll, D1, he had signed off after he had been paid, as was the usual practice. No one from the shipowners gave evidence.

I now briefly summarise the evidence led by both parties. The first plaintiff, a Greek, has been a captain of vessels since 1964. He is 56. He produced his contract of employment signed on 2 February 1980 between him and one G. Kontitsis, another Greek, who signed on behalf of the shipowners. G. Kontitsis was not called to give evidence. The salary stated in Exhibit P1 and its translation was monthly US$8,200, plus Sundays 16% i.e. US$1,312 per month, plus whatever was allowed under Greek Law governing the relevant period. He went to Sri Lanka to take command of the vessel in April 1980. The vessel was in a terrible state of disrepair, having been under arrest during the preceding 32 months. As master of the vessel, he prepared the crew's accounts. One Ikonomakos Dion, the chief officer, earned US$1,484.25 for 25 days' work in March 1981 and US$1,781.10 was his April 1981 wages. He said according to the relevant crew accounts, the chief officer earned all told at the rate of US$5,430 per month. He pointed out that as master his salary was fixed and he could not claim overtime.

He alleged that on 7 June 1981 G. Kontitsis met him in Singapore in Hilton Hotel to settle accounts. They reached an agreement, after which Kontitsis signed on the back of the last wage account. It was agreed that he was owed US$131,439. The document was admitted as Exhibit P2. He further said that Kontitsis gave him US$20,000 by cash cheques drawn in favour of the first plaintiff on Banque Nationale de Paris. He explained that he did not encash the 5 cheques as he was told by Kontitsis that they could be cashed only a few months after their meeting. Then, towards the end of October 1981 he went to his bankers in Piraeus to ask them to collect one of the cheques for US$20,000. He was later told by a clerk of his bank that his bankers had telephoned BNP, Singapore and was told that the account had no funds. His account with his bankers was not debited with the telephone charges but instead he had paid his bankers in cash in Greek currency. As regards the Crew Roll, Exhibit D1, he received copies of the Crew Roll in February 1986. He saw the entries of signing off, namely "Semarang 31 May 1981", "Nil" and a signature that looked like his. When shown the original Crew Roll, D1, he claimed they were all forgeries. He had reported the matter to the police in Piraeus. Before he left the vessel at Semarang, Indonesia, he had paid off the crew out of monies sent to him by the owners. They signed off in front of the Panamanian embassy official who had signed on the last column of the Crew Roll.

With regard to the wages of the second plaintiff, the first plaintiff said that he had prepared and submitted the wages account to the shipowners. The accounts were produced as evidence and marked "P8a to f". He explained the claims for Sunday allowance, extra work, overtime and vacation pay as set out in the Pan Hellenic Shipping Confederation Collective Agreement. He affirmed that the second plaintiff was owed US$22,272.50. Neither he nor the second plaintiff had filled in the columns in the Crew Roll under "Place and date of final discharge" and "Balance of Wages paid on discharge".

He explained that he agreed to accumulate the arrears of his pay over 16 months and 5 days because he trusted the shipowners. He said the rate of US$8,200 per month was comparable to the salaries paid to other captains. And that in his case, he had to double up as chief officer, second officer, owners' representative and even as a pumpman at times.

The first plaintiff was cross-examined at length. He insisted that the agreed salary of US$8,200 was not high at all. He referred, for example, to the pay of another captain of a vessel where he was paid all told US$26,246.24 for work over a period of only 1 month and 20 days from 1 February 1982 to 20 March 1982. When shown item 1 in the Crew Roll, he agreed that the figure "8" was different from the other "8"s on the same page; that it was gone over and appeared darker. He emphatically claimed he would not have accepted US$3,200 per month as the chief officer with overtime would get US$5,000 per month. He agreed that the chief engineer on the vessel was paid US$3,000 per month. He again asserted that he was paid a high salary because he had to do a lot of extra work on the vessel which had been under arrest for 32 months before he assumed command. He did not keep a portage bill or a master's general accounts. He also explained that he did not cash the 5 cheques because he and Kontitsis were going into a joint venture to buy ships and that was the reason why the 5 cheques were not dated. When shown the cheques he realised that although they were cheques drawn by the company, there was only one signature and was personally drawn. He did not notice the defect.

The second plaintiff, a Greek, first went to sea in 1964 as an apprentice engineer. He qualified as an engineer officer of vessels in 1975. He joined the vessel on 27 April 1980 as second engineer. He signed the contract with the first plaintiff in the latter's capacity as master of the vessel and on behalf of the shipowners. The contract, admitted and marked P18, provided for a salary of US$1,875 per month inclusive of bonus. He had previously worked on board the vessel for four years when it was named m.t. "Trafalcon Logic". When he boarded the vessel on 27 April 1980 it was in such a bad state that he could not recognise it. The only person left on board was a Pakistani fireman who had no money to go home. The second plaintiff did not have anything to eat until the first plaintiff arrived. The first engineer who had arrived with the captain left because he was shocked at the state of disrepair of the vessel. The second plaintiff claimed that he and the captain organised and worked very hard for 1-2 weeks before the vessel could sail again. He said chief engineer, N Ratnam, who was later called by the interveners as a witness, joined the vessel on 2 February 1980 and worked till 12 August 1980. Ratnam did not do much work. The second plaintiff was promoted as chief engineer on 13 August 1980 and he signed a new contract with the first plaintiff which was admitted as Exhibit P19, with the translation as Exhibit P19T.

When shown the Crew Roll, Exhibit D1, he claimed he did not write the word "NIL" and the signature was not his. When he left the vessel on 5 February 1981, he intended to return to work but he could not because he fell ill. He also met Kontitsis in Singapore and they settled accounts, as evidenced by Exhibit P8f. As translated, it showed that the shipowners admitted that they owed him US$22,272.50. The claim was for wages for the period from 1 October 1980 to 31 December 1980 and the average wage would work out to be US$7,773 per month.

In cross-examination, he said he had agreed to work because the salary was high. At US$1,625 per month plus bonus of US$250, it was high compared to his last-drawn salary of US$900 per month in his previous employment. He denied that he had signed off on the Crew Roll and on discovering that someone had filled it in for him, he had filed a complaint with the authorities in Greece. He admitted he made the mistake of saying in his complaint that he was the chief engineer of the vessel from 2 February 1980 to 5 February 1981. But he thought it was but a small mistake. He claimed that in Singapore, Kontitsis paid him US$5,483 by travellers' cheques and Kontitsis admitted that he was owed the sum claimed. Unlike the first plaintiff, he did not claim against the two Greek shipowners in Greece because he did not want to spoil the friendship. He denied that like that first plaintiff he was claiming wages knowing that interveners might have difficulty in disputing their claims.

The interveners called four witnesses and relied principally on the Crew Roll and the report (P13) of DW1 Chng Beng Han, the principal scientific officer in charge of the Documents Examination Unit of the Department of Scientific Services. According to him, he found that the questioned figure "8" in the Crew Roll was altered and the evidence from the trend of the strokes indicated that the original figure should have been "3". On being pressed in cross examination, he maintained that on scientific probabilities, though not in absolute terms, it was the figure "3" that was written over with the figure "8". This expert witness also referred to the fluent and freely written signatures in the Crew Roll, and the signatures of the first and second plaintiffs, and opined that there was no evidence of any imitating of the design of the specimen signatures. He opined that in spite of other relatively significant differences, he was "unable to reach a clear-cut conclusion on whether the questioned signature (was) a forgery."

The interveners then called DW2 Capt Ioannis Andreas Goros, a director of a shipping company. In 1961 he was Commander of the Royal Greek Navy. In 1964 he took over as a captain of the first merchant navy ship. In 1970 he stopped sailing. He undertook further studies in shipping and insurance. Later he worked as the general manager of four shipping companies based in Piraeus. In 1980 and 1981 he was general manager of a shipping company in Greece which had 4 or 5 cargo ships, with 8,000 DWT to 25,000 DWT, operating worldwide. They were not motor tankers. But the last time he operated a motor tanker was in 1975. However, he kept in touch with the wages of captains, officers and crew of motor tankers.

In his opinion and according to his knowledge, the pay of a captain of a tanker like m.t. "Danimar" at the material time would be between US$3,000 and US$3,500 per month all in excepting vacation pay and victuals. He also said it would be very difficult for a captain to double up as chief engineer, second officer and as a pumpman. For a few days, maybe. But otherwise the vessel would be unseaworthy. Further, where a vessel was chartered it generally had to be entered with a P & I Club and had to carry hull and machinery insurance. At the material time, a Panamanian vessel had to be manned by officers with 6-7 certificates of competency.

In his experience, he found that the differences between the incomes of a captain and a chief officer was between 10% and 20%.The basic wage of a chief officer was US$1,300 to US$1,500 per month plus overtime, bonus and Sunday allowances. He did not think that a chief officer could earn more than US$4,000 per month all told.

As to the responsibilities of a captain in keeping accounts, he said that a captain had to close his accounts maximum every 3 months.

Every crew's and officer's salary less all deductions had to be recorded in the Master's General Accounts which had to be checked by shipowners who otherwise would not have a clear picture of the expenses.

In cross examination, he said he did take over a ship which had been under arrest for three years at S$6,000 minimum 1 month and pro-rata in excess of 1 month. When told that one Capt Parchas Anastasios, who had captained the vessel was paid the basic wage of US$5,323.47 per month and in total collected for 1 month's work US$15,747, this witness said he was not only surprised but shocked.

When told that two chief engineers of the vessel had been paid US$10,719 for one month's work in one case and US$7,773 for one month's work in the other case, Capt Goros said that he would not believe it unless the chief engineers had done repairs on board the vessel outside their normal duties.

According to the witness called by the interveners, DW3 Nadesan Retnam, a business man who had served on board the vessel as chief engineer, it was he who had fixed the charter of the vessel to Pertamina. He said the vessel's condition in Colombo was not as bad as made out by the plaintiffs. In any case, after a few days voyage from Colombo to Singapore, the vessel was repaired in Singapore, at the cost of about S$40,000. He said Capt Parchas was paid the very high wage because the vessel had been abandoned in Indonesia after the charter had ended and the interveners wanted to bring the vessel back to Singapore for arrest and sale. That was why the captain and crew were paid at a premium. Those scales were not to be relied for comparison.

He said the first plaintiff was paid US$3,200 per month. He knew because he was responsible in submitting the Crew List and Wage Scale. He no longer had the documents because his company which handled the vessel as agents was wound up and the landlord had left his papers outside the office. He was told by Kontitsis that the first plaintiff was paid US$3,200. When shown the Crew Roll, he said he definitely did not see the figure US$8,200. He was quite sure. He could not remember the salary of the second plaintiff; it was US$2,900 or US$3,000 per month. He did not know how much the second plaintiff was paid; the owners dealt with him directly. He had seen Kontitsis checking the wages of the officers and crew at his flat in Ardmore Park, Singapore. He said the first plaintiff knew that the shipowners' corporate cheques had to be signed by both Kontitsis and the other Greek owner, Archadijkakis.

In cross examination, he maintained that he was told by Kontitsis the salary of the first plaintiff at US$3,200 which he said was US$3,300 on other occasions but which he corrected in re-examination. He admitted that in March 1982 he went to Jakarta and helped bring back the vessel to Singapore for arrest. He was paid US$17,866.66 for work over 1 month and 20 days. He said in re-examination that he had to submit the Crew Salary List to Pertamina for payment of the Indonesian Crew Tax and the list had to be signed by the shipowners.

The interveners' last witness was a bank officer in their employ. She said it was not the practice for an overseas bank to ring to see if a cheque could be cleared, that it was not possible to give an answer over the telephone and even if it was possible, banking secrecy would have prohibited any such disclosure. Finally, she said that as the account of the shipowners was an overdraft account, it was not possible to confirm the state of the account unless a cheque for collection had been received by them before the state of the account could be ascertained.

The plaintiffs had the burden of proving that the wages and allowances they claimed were due from and payable by the shipowners. I listened to their evidence carefully and considered the documents they produced. I found I could not believe them. The wages accounts they produced were prepared by the first plaintiff. Kontitsis was not called although I could understand the difficulties in getting him to testify. I could not believe the first plaintiff accumulating all those arrears over so long a period. I believed that both of them had signed off the vessel, that they had been paid in full and had signed on the Crew Roll which was one official document which had to be kept up to date and presented from time to time to the Panamanian authorities for port clearances. The evidence of Capt Goros was quite devastating to the case for the plaintiffs. His expert knowledge was undoubted by me and he said in no uncertain terms that the prevailing tariffs for a captain's and chief engineer's pay was much less than the enormous rates claimed by both the plaintiffs. I accept the evidence that the unusual payments to Captain Parchas was because his services were required to bring the vessel back from Indonesia after the charter for arrest and sale in

Singapore and that the chief engineers were paid the two huge sums probably because, I think, they did repairs to the vessel, which would have been payments outside the contracts of employment.

The handwriting expert's evidence was also clear. I accept his evidence and I find as a fact that the figure "8" was written over the figure "3" in the Crew Roll with the result that US$3,200 as the monthly pay became US$8,200. I am not prepared to place any reliance on the contracts the plaintiffs produced. They could have been prepared by the plaintiffs. In connection with the five cheques signed by Kontitsis, I am also not prepared to believe the version of the first plaintiff in the absence of any testimony from Kontitsis and, at any rate, the single signature of Kontitsis instead of the usual two signatories cast considerable doubt on the arrangements as alleged by the first plaintiff.

I regret to say that the second plaintiff was assisted by the first plaintiff to make his wholly unmeritorious claims against the residual value of the vessel. As I had indicated, I am satisfied that he had received his full emoluments before he left the vessel and that he had signed off the vessel. His claims over such a short period is too extravagant for belief, having regard to the unequivocal evidence of Capt Goros on the prevailing rates of pay.

In the premises, the plaintiffs' claims are dismissed with costs.

Also found at [1989] 1 CLJ 75